IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/673,659
Inventor(s)	:	Stelljes, Jr., et al.
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Art Unit	:	1772
Examiner	:	D. J. Loney
Docket No.	:	9372
Confirmation No.	:	2454
Customer No.	:	27752
Title	:	EMBOSSED MULTI-PLY FIBROUS STRUCTURE
	:	PRODUCT AND PROCESS FOR MAKING SAME

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APPEAL BRIEF

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Dear Sir,

This Brief is filed pursuant to the appeal from the U.S. Patent and Trademark Office decision (no Paper Number) mailed November 3, 2005. A timely Notice of Appeal was filed on November 18, 2005.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio. The inventor(s), Michael Gomer Stelljes, Jr., Christopher Scott Kraus, George Vincent Wegele, and Kevin Benson McNeil assigned his/her/their interest to the Procter & Gamble Company in an assignment corresponding to application Serial No.10/673,659, filed September 29, 2003.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

The application was originally filed with claims 1-25. Claims 10-23 and 25 have been withdrawn.

Claims 1-9 and 24 are pending and are finally rejected.

Claims 1-9 and 24 are appealed.

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Appellant appeals the final rejection of November 3, 2005 (the Notice of Appeal for these claims was transmitted on November 18, 2005 and received by the Office on November 18, 2005).

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 of the present invention, for example, provides an embossed multi-ply fibrous structure product comprising: two or more plies of fibrous structure (FIG. 1A, B, C:10) bonded together along adjacent surfaces (FIG. 1A, B, C:16, 18) of the two or more plies (FIG. 1A, B, C:12, 14) by an adhesive)FIG. 1A, B, C:24) to form a bond area (where the bond area is less than about 30% of the bonded adjacent surfaces). The product comprises two faces, wherein one face comprises non-adhesively bonded embossed sites (FIG. 1A, B, C:22) where all of the two or more plies at the embossed site are embossed and the other face comprises adhesively bonded non-embossed sites (FIG. 1, A, B, C:20) where all of the two or more plies at the unembossed site are unembossed, and wherein the fibrous structure product exhibits an embossment height of at least about 1000 μm. (Specification, pp. 2-3, 5-8)

Further, claim 24 of the present invention, for example, provides an embossed multi-ply fibrous structure product comprising: a first face (FIG. 1, A, B, C:52) and a second face (FIG. 1, A, B, C:54), wherein the first face comprises non-adhesively bonded embossed sites (FIG. 1, A, B, C:22) where all of the multi-ply fibrous structure at the embossed sites is embossed and the second face comprises adhesively bonded non-embossed sites (FIG. 1, A, B, C:20) where all of the multi-ply fibrous structure at the non-embossed sites is unembossed. (Specification, pp. 2-3, 5-8)

Further still, the present invention provides that the embossed multi-ply fibrous structure have certain physical parameters; namely, plybond strength of at least 4 g/in." (Claim 2) (Specification, p. 5).

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Claim 3 further limits Claim 1 such that "the fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a wet burst of at least about 305 g." (Claim 3) (Specification, p. 6).

Claim 4 depends from claim 1 and adds the limitation that the fibrous structure exhibits a sheet caliper of at least about 40 mils. (Specification, p. 6)

Claim 5 depends from claim 1 and adds the limitation that the fibrous structure exhibits a sheet caliper to effective caliper ratio of greater than 1.1. (Specification, p. 6)

Claim 6 further limits Claim 1 such that "the fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a cross machine direction stretch at peak load of greater than 8%. (Specification, pp. 1, 6)

Claim 7 depends from claim 1 and adds the limitation that the fibrous structure product is in roll form. (Specification, p. 6)

Claim 8 depends from claim 1 and adds the limitation that the adhesive is present on the adjacent surfaces in the form of separate, discrete dots and/or separate, discrete stripes. (Specification, p. 5)

Claim 9 depends from claim 1 and adds the limitation that at least one of the two or more plies of fibrous structure comprises a fibrous structure selected from the group consisting of: through-air-dried fibrous structure plies, differential density fibrous structure plies, wet laid fibrous structure plies, air laid fibrous structure plies, conventional fibrous structure plies and mixtures thereof. (Specification, p. 8)

Key factors of the present invention are: (1) the configuration of the embossed/non-embossed sites (specifically, the Appellant's claimed invention is not adhesively bonded at the embossment sites), (2) the deposition of glue on the plies, and (3) the physical parameters surrounding the fibrous structure product.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Rejection under 35 USC §102(b) over U.S. Patent No. 3,708,366:

(a) Claim 24

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Rejection under 35 USC §102(b) over U.S. Patent No. 5,846,636:

(a) Claim 24

(b) Claims 1, 4, 5, and 7-9

Rejection under §103(a) over U.S. Patent No. 5,846,636:

(a) Claims 2, 3, and 6

ARGUMENTS

Rejection under 35 U.S.C. 102(b) over U.S. 3,708,366

Claim 24

Claim 24 is rejected under 35 U.S.C. §102(b) over U.S. 3,708,366 (hereinafter Donnelly). Claim 24 recites an **embossed multi-ply fibrous structure product** comprising a **first face** and a **second face**, wherein the **first face comprises non-adhesively bonded embossed sites** where all of the **multi-ply fibrous structure at the embossed sites is embossed** and the **second face comprises adhesively bonded non-embossed sites** where **all of the multi-ply fibrous structure at the non-embossed sites is unembossed**.

The Office Action states that "Donnelly discloses an embossed multiply sheet wherein the first face comprises non-adhesively bonded embossed sites (section just to the right of 9' which can be considered the top of the embossment) and adhesively bonded non-embossed sites." (Office Action dated November 3, 2005, p. 2). However, the Appellant contends that the Office Action has misinterpreted Donnelly in that Donnelly teaches **adhesively bonded embossed sites.** Specifically, Donnelly teaches that "[the] smooth roll 10 applies adhesive to the web on each protuberance of the male roll across the apparatus width." (Donnelly, col. 3, lines 55-58) Further, Donnelly states that "[w]eb 7 is retained by adhesive 13 in contact with web 6 and the two webs are slightly nested, adhesive being present only in the **apex** portions of the embossments. The adhesive in this instance primarily retains the two webs together." (Emphasis added) (Donnelly, col. 4, lines 21-25). Further, the Office Action has failed to specifically refer to the section in Donnelly which teaches adhesively bonded non-embossed sites as is claimed in Appellant's Claim 24. The Office Action refers to "adhesively bonded non-embossed sites at 13" (Office Action dated November 3, 2005, p. 2). However, as argued

supra, the adhesive at 13 is located at the embossed sites and there is no adhesive located at the non-embossed sites. Thus, Donnelly fails to teach the particular elements of the Appellant's claim, namely the limitation of "non-adhesively bonded embossed sites" and "adhesively bonded non-embossed sites." (Claim 24).

Because Donnelly does not teach all of the limitations of Claim 24, Donnelly does not anticipate Claim 24. Therefore, Appellant submits that the rejection of Claim 24 under 35 U.S.C. §102(b) over Donnelly is improper and should be withdrawn.

Rejection under 35 U.S.C. 102(b) over U.S. 5,846,636

Claim 24

Claim 24 is rejected under 35 U.S.C. §102(b) over U.S. 5,846,636 (hereinafter Ruppel). Claim 24 recites an **embossed multi-ply fibrous structure product** comprising a **first face** and a **second face**, wherein the **first face comprises non-adhesively bonded embossed sites** where all of the **multi-ply fibrous structure at the embossed sites is embossed** and the **second face comprises adhesively bonded non-embossed sites** where **all of the multi-ply fibrous structure at the non-embossed sites is unembossed.**

The Office Action states: "Ruppel et al discloses two sheets 5, 6 that are embossed and adhesively 9 bonded at non-embossed sites ... [Ruppel shows] nesting like Appellant's figure 1. [Also] adhesive 9 (referring to Ruppel) [is at] the same location as Appellant's adhesive bonded region 20 in [Appellant's figure 3]" (Office Action dated November 3, 2005, p. 2). Appellant maintains that the Office Action has misinterpreted the teaching in Ruppel and, in fact, the teaching in Ruppel is quite the opposite of what the Office Action has interpreted it to be. Ruppel teaches that the "two layers are bonded to each other at least by some of the tips of one layer that are adhesively affixed to the other layer between two protrusions." (Ruppel, col. 2, lines 7-9) The "tips" that Ruppel is referring to are the "first protrusions of the first layer" (Ruppel, col. 2, line 11), these first protrusions being embossed sites having adhesive on them. (Ruppel, col. 2, lines 45-61). The Office Action adhesive bonded region 20 is a non-embossed site, but the non-embossed sites in Ruppel do not have adhesive on them as adhesive has only been applied to the embossed protrusions. (Ruppel, col. 2, lines 45-61). In other words, Ruppel does

not teach "non-adhesively bonded embossed sites" and "adhesively bonded non-embossed sites." (Claim 24). Thus, the Office Action has failed to show that Ruppel teaches every of the Appellant's claimed limitations.

Therefore, the rejection of Claim 24 under 35 U.S.C. §102(b) over Ruppel is improper and should be withdrawn.

Claims 1, 4, 5 and 7-9

Claims 1, 4, 5, and 7-9 are rejected under 35 U.S.C. §102(b) over U.S. 5,846,636 (hereinafter Ruppel). Independent Claim 1, and claims 4, 5 and 7-9 which are dependent there from, recite, *inter alia*, an **embossed multi-ply fibrous structure product** comprising **two or more plies of fibrous structure bonded together** with **adjacent surfaces of the two or more plies by an adhesive to form a bond area**, wherein the **bond area is less than about 30% of the bonded adjacent surfaces**, wherein the product **comprises two faces**, wherein **one face comprises non-adhesively bonded embossed sites where all of the two or more plies at the embossed site are embossed** and the other face **comprises adhesively bonded non-embossed sites where all of the two or more plies at the unembossed site are unembossed**, and **wherein the fibrous structure product exhibits an embossment height of at least about 1000 μm**.

In the instant Application, the Office Action must show that the art teaches or suggests all the Appellant claimed limitations. This the Office Action has not done. The Office Action states that Ruppel discloses two sheets that are embossed and adhesively bonded at non-embossed sites. The Office Action further states that the adhesive in Ruppel is at the same location as the Appellant's adhesive bonded region and that the non-adhesively bonded embossed sites in Ruppel are at the same location as in the Appellant's claimed invention. (Office Action dated November 3, 2005, p. 3) However, the teaching in Ruppel is quite the opposite of what the Office Action has interpreted, and is therefore different from the Appellant's claimed invention. Ruppel teaches that the "two layers are bonded to each other at least by some of the tips of one layer that are adhesively affixed to the other layer between two protrusions." (Ruppel, col. 2, lines 7-9) The "tips" that Ruppel is referring to are the "first protrusions of the first layer" (Ruppel, col. 2, line 11), these first protrusions being embossed sites having adhesive on them.

(Ruppel, col. 2, lines 45-61). However, this is in stark contrast to the Appellant's claimed invention which is clearly not adhesively bonded at the embossment sites. In other words, Ruppel does not teach **non-adhesively bonded embossed sites where all of the two or more plies at the embossed site are embossed** (Claim 1). Thus, the Office Action has failed to show that Ruppel teaches every element of the Appellant's claimed limitations.

Therefore, the rejection of Claims 1, 4, 5, and 7-9 under 35 U.S.C. §102(b) over Ruppel is improper and should be withdrawn.

Rejection under 35 U.S.C. 103(a) over U.S. 5,846,636

Claims 2, 3, and 6

Claims 2, 3, and 6, which are dependent on claim 1, are rejected under 35 U.S.C. §103(a) over U.S. 5,846,636 (hereinafter Ruppel).

Claim 2 further limits Claim 1 such that "the two or more plies of fibrous structure are bonded together at a plybond strength of at least 4 g/in." (Claim 2). Claim 3 further limits Claim 1 such that "the fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a wet burst of at least about 305 g." (Claim 3). Claim 6 further limits Claim 1 such that "the fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a cross machine direction stretch at peak load of greater than 8%." (Claim 6).

Independent Claim 1, and claims 2, 3 and 6 which are dependent there from, recite, *inter alia*, an **embossed multi-ply fibrous structure product** comprising **two or more plies of fibrous structure bonded together** with **adjacent surfaces of the two or more plies by an adhesive to form a bond area**, wherein the **bond area is less than about 30% of the bonded adjacent surfaces**, wherein the product **comprises two faces**, wherein **one face comprises non-adhesively bonded embossed sites where all of the two or more plies at the embossed site are embossed** and the other face **comprises adhesively bonded non-embossed sites where all of the two or more plies at the unembossed site are unembossed**, and **wherein the fibrous structure product exhibits an embossment height of at least about 1000 μm.**

To establish a prima facie case of obviousness, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP §2143.03; MPEP §2142, §2143; *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The Office Action states that Ruppel discloses two sheets that are embossed and adhesively bonded at non-embossed sites. The Office Action further states that the adhesive in Ruppel is at the same location as the Appellant's adhesive bonded region and that the non-adhesively bonded embossed sites in Ruppel are at the same location as in the Appellant's claimed invention. (Office Action dated October 3, 2005, p. 3) However, Ruppel teaches that the "two layers are bonded to each other at least by some of the tips of one layer that are adhesively affixed to the other layer between two protrusions." (Ruppel, col. 2, lines 7-9) The "tips" that Ruppel is referring to are the "first protrusions of the first layer" (Ruppel, col. 2, line 11), these first protrusions being embossed sites having adhesive on them. (Ruppel, col. 2, lines 45-61). However, this is in stark contrast to the Appellant's claimed invention which is clearly not adhesively bonded at the embossment sites. In other words, Ruppel does not teach **non-adhesively bonded embossed sites where all of the two or more plies at the embossed site are embossed** (Claim 1 and therefore claims 2, 3 and 6 dependent therefrom). Thus, the Office Action has failed to show that Ruppel teaches every of the Appellant's claimed limitations.

Moreover, claims 2, 3, and 6 require, *inter alia*, that very specific physical parameters (namely plybond strength of at least 4 g/in (Claim 2), wet burst of at least about 305 g (Claim 3), and a cross machine direction stretch at peak load of greater than 8% (Claim 6). Again, all of the claim limitation are not suggest by Ruppel.

The Office Action states that "Ruppel et al does disclose that it is known that embossing multiply sheets results in improved liquid absorption, touch, and softness. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to the Ruppel et al to vary the strength properties of the product as desired for its particular application (i.e. tissue and or toilet paper) in order to form an improved product therefrom." (Office Action dated November 3, 2005, p. 4). Ruppel does not set forth any steps or reason for choosing a particular range for plybond strength, wet burst, or cross machine direction stretch at peak load. Thus, the Office Action has

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failed to point to any specific teachings in Ruppel that teach or suggest the claimed limitations as taught by the Appellant in Claims 2, 3, and 6. Because Ruppel does not teach or suggest plybond strength of at least 4 g/in (Claim 2), wet burst of at least about 305 g (Claim 3), or a cross machine direction stretch at peak load of greater than 8% (Claim 6), Ruppel does not teach or suggest all the claim limitations. Accordingly, the obviousness rejection is improper and should be withdrawn.

SUMMARY

In view of all of the above, it is respectfully submitted that Claims 1-9 and 24 are in condition for allowance.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY

Signature

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Date: February 21, 2006
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CLAIMS APPENDIX

Claim 1 (Previously presented): An embossed multi-ply fibrous structure product comprising two or more plies of fibrous structure bonded together along adjacent surfaces of the two or more plies by an adhesive to form a bond area, wherein the bond area is less than about 30% of the bonded adjacent surfaces, wherein the product comprises two faces, wherein one face comprises non-adhesively bonded embossed sites where all of the two or more plies at the embossed site are embossed and the other face comprises adhesively bonded non-embossed sites where all of the two or more plies at the unembossed site are unembossed, and wherein the fibrous structure product exhibits an embossment height of at least about 1000 μm.

Claim 2 (Original): The fibrous structure product according to Claim 1 wherein the two or more plies of fibrous structure are bonded together at a plybond strength of at least about 4 g/in.

Claim 3 (Original): The fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a wet burst of at least about 305 g.

Claim 4 (Original): The fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a sheet caliper of at least about 40 mils.

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Claim 5 (Original): The fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a sheet caliper to effective caliper ratio of greater than 1.1.

Claim 6 (Original): The fibrous structure product according to Claim 1 wherein the fibrous structure product exhibits a cross machine direction stretch at peak load of greater than 8%.

Claim 7 (Original): The fibrous structure product according to Claim 1 wherein the fibrous structure product is in roll form.

Claim 8 (Original): The fibrous structure product according to Claim 1 wherein the adhesive is present on the adjacent surfaces in the form of separate, discrete dots and/or separate, discrete stripes.

Claim 9 (Original): The fibrous structure product according to Claim 1 wherein at least one of the two or more plies of fibrous structure comprises a fibrous structure selected from the group consisting of: through-air-dried fibrous structure plies, differential density fibrous structure plies, wet laid fibrous structure plies, air laid fibrous structure plies, conventional fibrous structure plies and mixtures thereof.

Claim 10 (Withdrawn): An embossed multi-ply fibrous structure product comprising two or more plies of fibrous structure bonded together at a plybond strength of at least about 4 g/in along adjacent surfaces of the two or more plies by an adhesive to

form a bond area, wherein the bond area is less than about 30% of the bonded adjacent surfaces, wherein the product exhibits an embossment height of at least about 1000 μm, and a wet burst of at least about 305 g.

Claim 11 (Withdrawn): The fibrous structure product according to Claim 10 wherein the fibrous structure product exhibits a sheet caliper of at least about 40 mils.

Claim 12 (Withdrawn): The fibrous structure product according to Claim 10 wherein the fibrous structure product exhibits a sheet caliper to effective caliper ratio of greater than 1.1.

Claim 13 (Withdrawn): The fibrous structure product according to Claim 10 wherein the fibrous structure product exhibits a cross machine direction stretch at peak load of greater than 8%.

Claim 14 (Withdrawn): The fibrous structure product according to Claim 10 wherein the fibrous structure product is in roll form.

Claim 15 (Withdrawn): The fibrous structure product according to Claim 10 wherein the adhesive is present on the adjacent surfaces in the form of separate, discrete dots and/or separate, discrete stripes.

Claim 16 (Withdrawn): The fibrous structure product according to Claim 10 wherein at least one of the two or more plies of fibrous structure comprises a fibrous

structure selected from the group consisting of: through-air-dried fibrous structure plies, differential density fibrous structure plies, wet laid fibrous structure plies, air laid fibrous structure plies, conventional fibrous structure plies and mixtures thereof.

Claim 17 (Withdrawn): A method for making an embossed multi-ply fibrous structure product comprising the steps of:

a) adhesively binding two or more plies of fibrous structure together to form a multi-ply fibrous structure by applying an adhesive to at least one surface of the two or more plies, wherein the adhesive is applied to less than about 30% of at least one of the two or more plies surfaces;

b) embossing the multi-ply fibrous structure such that the multi-ply fibrous structure exhibits an embossment height of at least about 1000 μm to form the embossed multi-ply fibrous structure product.

Claim 18 (Withdrawn): The method according to Claim 17 wherein the adhesive is applied in an amount sufficient to provide a plybond strength of at least 4 g/in in the embossed multi-ply fibrous structure product.

Claim 19 (Withdrawn): The method according to Claim 17 wherein at least one of the two or more plies of fibrous structure comprises a fibrous structure selected from the group consisting of: through-air-dried fibrous structure plies, differential density fibrous structure plies, wet laid fibrous structure plies, air laid fibrous structure plies, conventional fibrous structure plies and mixtures thereof

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Claim 20 (Withdrawn): The method according to Claim 17 wherein the multi-ply embossed fibrous structure product exhibits a wet burst of at least about 305 g.

Claim 21 (Withdrawn): The method according to Claim 17 wherein the adhesive is applied to the adjacent surfaces in the form of separate, discrete dots and/or separate, discrete stripes.

Claim 22 (Withdrawn): An embossed multi-ply fibrous structure product made by the method according to Claim 17.

Claim 23 (Withdrawn): A method for making an embossed multi-ply fibrous structure product comprising the steps of:

a) providing a first ply of fibrous structure;

b) providing a second ply of fibrous structure;

c) applying an adhesive to a surface of the first ply of fibrous structure such that the adhesive contacts from about 0.1% to about 30% of the surface area of the first ply of fibrous structure;

d) combining and marrying the first and second plies of fibrous structure along adjacent surfaces of the first and second plies of fibrous structure such that the adhesive bonds the two plies together to form a multi-ply fibrous structure exhibiting a plybond strength of at least about 4 g/in; and

e) embossing the multi-ply fibrous structure such that an embossed multi-ply fibrous structure product exhibiting an embossment height of at least 1000 μm is formed.

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Claim 24 (Previously Presented): An embossed multi-ply fibrous structure product comprising a first face and a second face, wherein the first face comprises non-adhesively bonded embossed sites where all of the multi-ply fibrous structure at the embossed sites is embossed and the second face comprises adhesively bonded non-embossed sites where all of the multi-ply fibrous structure at the non-embossed sites is unembossed.

Claim 25 (Withdrawn): An embossed multi-ply fibrous structure product comprising a first face and a second face, wherein the first face comprises non-densified embossed sites and the second face comprises densified non-embossed sites.

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